

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

OP.No. 14320 of 2001(D)

PETITIONER:

**SAKTHI TRADERS,
MARANCHERRY,
PONNANI,
REP: BY ITS MANAGING PARTNER
SRI.VIPIN KUMAR VYAS.**

**BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.R.MURALIDHARAN (AROOR)**

RESPONDENTS:

- 1) SALES TAX OFFICER, PONNANI.**
- 2) STATE OF KERALA, REP: BY ITS
SECRETARY (TAXES), SECRETARIAT,
THIRUVANANTHAPURAM.**

BY

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 18/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ORDER ON CMP.No.22741 of 2001 in OP.No.14320 of 2001-D.

Dismissed.

18-7-2007.

Sd/-T.R.Ramachandran Nair, Judge.

Petitioner's Exhibits:-

P1: Copy of the assessment order passed by the 1st respondents for the year 1996-97.

P2: Copy of the demand notice issued by the 1st respondent dated nil.

Respondents' Exhibits:-

Nil.

// true copy //

kvs/-

P.A. To Judge.

T.R.RAMACHANDRAN NAIR, J.

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O.P.No.14320 of 2001-D.

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Dated this the 18th day of July, 2007.

J U D G M E N T

This writ petition is filed challenging that portion of Ext.P1 whereby an amount of Rs.40,510/- has been shown as interest at 81% due under Sec.23(3) of the KGST Act from 1.4.1997 to 30.9.2000. Ext.P1 is the assessment order passed by the Sales Tax Officer which is dated 27.9.2000. The said assessment order shows that the assessee has filed a total exempted and taxable turnover of Rs.67,37,614.40., Rs.57,53,186.20 and Rs.9,84,428.20 for the year 1996-97. Now, after referring to various aspects and after over ruling the objections final assessment for the year 1996-97 has been completed by finalising the tax due at Rs.63,489/-. The balance tax after adjusting sales tax paid is Rs.47,049/-. Finally in Ext.P1 penal interest of 81% has been imposed. Ext.P2 is the demand notice issued pursuant to Ext.P1.

2. The imposition of penal interest has been challenged on various grounds by the petitioner. Against the assessment order he has filed an appeal. The question whether the authorities can impose penal interest on turnover tax from the date of filing of the return or from the date of assessment has been settled by the Apex Court in the decision reported in *Maruti Wire Industries Pvt. Ltd. v. Sales Tax Officer, First Circle,*

***Mattancherry and others* (122 STC 410). In this case penal interest is charged under Sec.23(3) of the KGST Act. Petitioner had paid the entire tax on the basis of the return filed. Only after Ext.P1 assessment alone, balance tax has been demanded. This Court by judgment in OP.No.17845 of 2000 has held in similar circumstances that the demand of interest for any period prior to the due date on which the amount was payable after service of notice of demand along with assessment order is not correct. Therefore, following the same I quash that portion of Ext.P1 by which the officer has imposed penal interest from the date of filing of return till the date of assessment order. For any demand other than the same the authorities can proceed.**

The writ petition is disposed of accordingly. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-